



**NEVADA COMMISSION ON ETHICS
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION
REGARDING JUST AND SUFFICIENT CAUSE**

REQUEST FOR OPINION NO. 05-18

SUBJECT: CANDICE TRUMMELL, CHAIRMAN
NYE COUNTY COMMISSION

A. JURISDICTION:

In her capacity as Nye County Commission Chairman Candice Trummell is a public officer as defined by NRS 281.4365. As such, the commission has jurisdiction over the complaint.

B. REPORT OF INVESTIGATIVE ACTIVITIES:

- Reviewed Request for Opinion 05-18 (Tab B)
- Reviewed subject's response dated March 26, 2005 (Tab C)
- Reviewed agenda for Nye County Commission meetings on January 3, 2005 and January 18, 2005.
- Reviewed minutes for Nye County Commission meeting on January 3, 2005 (Tab D)
- Reviewed Nye County Commission agenda request forms dated December 23, 2004 and January 7, 2005
- Reviewed Resolution to Amend Nye County Personnel policy Manual

C. RECOMMENDATIONS:

Based on investigative activities, the Executive Director recommends the Panel find that just and sufficient cause **EXISTS** for the Commission to hear and render an opinion in this matter relating to the provisions of:

- NRS 281.501(2); and
- NRS 281.501(4).

SPECIFIC REASON:

Sufficient credible evidence exists to support a finding of just and sufficient cause for the Commission to hold a hearing and render an opinion regarding whether the subject of the complaint violated the above provisions of NRS Chapter 281.

D. SUMMARY OF REQUEST FOR OPINION:

The request for opinion alleges violation of NRS 281.501(2) by Nye County Commission Chairman Candice Trummell (hereinafter “Trummell”). Specifically, the complaint alleges Trummell violated the Ethics in Government law by:

1. Requesting an item be placed on the January 3, 2005 Nye County Commission agenda which considered amending the Nye County Personnel Policy Manual (hereinafter “personnel policy”) to allow employees to utilize a flexible work schedule. This amendment allegedly would result in a benefit to Trummell’s mother, Shirley Trummell, a county employee who had been denied a flexible work schedule by the county manager;
2. Advocating for the passage of and ultimately voting for a personnel policy amendment which, if it had been enacted, would allegedly have benefited her mother; and subsequently, after the agenda item was discussed on January 3, 2005
3. Requesting that County Manager Michael Maher’s performance evaluation be placed on the agenda in alleged retaliation for his denial of her mother’s request for flextime.

Pursuant to NAC 281.189, the Executive Director may investigate relevant issues and facts beyond those presented in an ethics complaint in determining his written recommendation of whether just and sufficient cause exists for the Commission to render an opinion on the ethics complaint.

Accordingly, based on the allegations made in the complaint and the surrounding facts and circumstances, the Executive Director considered a potential violation of NRS 281.501(4).

E. SUMMARY OF SUBJECT’S RESPONSE:

In her response, Trummell denied all of the allegations set forth in the complaint and provided the following information:

- Charlie Rodewald (hereinafter “Rodewald”), the former Nye County Budget Director, filed the complaint in retaliation against Trummell. Rodewald

submitted this complaint to the Commission on Ethics only days after a public confrontation at a Nye County Commission meeting regarding his job performance, where Trummell questioned Rodewald's accounting practices and Rodewald subsequently resigned after an 'atrocious' audit report from an external auditor;

- Tension exists between Trummell and County Manager Michael Maher (hereinafter "Maher") stemming from Trummell's lack of support to promote Maher into the then vacant position of County Manager; and Trummell believes Maher denied her mother's request for a flexible work schedule in retaliation for Trummell's lack of support for his promotion;
- She did not place the item in question on the Nye County Commission's agenda;
- She spoke with Larry Beller from Larry Beller and Associates, human resources consultant, and with Ron Kent, Nye County Deputy District Attorney, and that both advised Trummell she could participate in the discussion regarding the flexible work schedule Personnel policy; and
- The timing of Maher's performance evaluation and the personnel policy agenda item are not related to one another. It is Trummell's responsibility as Chairman of the Nye County Commission to schedule performance evaluations for the County Manager and the beginning of the year seemed like a good time to start the process. Further, she scheduling the review until after the agenda item was considered, and no action was taken as a result of Maher's performance review.

F. PERTINENT STATUTES AND REGULATIONS:

NRS 281.501

Additional standards: Voting by public officers; disclosures required of public officers and employees; effect of abstention from voting on quorum; Legislators authorized to file written disclosure.

* * * * *

2. Except as otherwise provided in subsection 3, in addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

- (a) His acceptance of a gift or loan;
- (b) His pecuniary interest; or
- (c) His commitment in a private capacity to the interests of others.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the

applicability of the requirements set forth in subsection 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

* * * * *

4. A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

(a) Regarding which he has accepted a gift or loan;

(b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or

(c) In which he has a pecuniary interest,

without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Except as otherwise provided in subsection 6, such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 in a timely manner.

* * * * *

8. As used in this section, “commitment in a private capacity to the interests of others” means a commitment to a person:

(a) Who is a member of his household;

(b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;

(c) Who employs him or a member of his household;

(d) With whom he has a substantial and continuing business relationship; or

(e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

G. RESULTS OF INVESTIGATION:

Factual Background:

Candice Trummell presently serves as Chairman of the Nye County Commission. Her mother, Shirley Trummell, an employee of Nye County and has been for more than nineteen (19) years. In the past, Trummell’s mother had flexed her work schedule in order to attend the Community College of Southern Nevada and the University of Nevada, Las Vegas (UNLV). This was done with the approval of former county managers and the district attorney’s office, in accordance with the established personnel policy. The policy calls for the approval of the department head or elected official and

the county manager when requesting flexible work schedules. Trummell's mother recently requested a flexible work schedule from the new county manager (Maher) in order to continue to attend accounting classes. Maher denied her request.

Shirley Trummell then requested an item be placed on the Nye County Commission agenda that would consider an amendment to the Nye County Personnel Policy Manual allowing full-time employees to utilize flexible work schedules in order to take college classes. The agenda item request was pulled by Maher and subsequently put back on the agenda by county Personnel Administrator Danelle Shamrell. This request was heard during the January 3, 2005 Commission meeting, and Shirley Trummell made public comment regarding the agenda item. After testimony and board discussion, the Commission voted to bring back a draft of a new personnel policy allowing for flexible work schedules to attend college classes. The draft was then presented as Resolution No. 2005-01 at the January 18, 2005 Commission meeting, wherein the Commission determined the policy would remain the same and no further action was taken on the proposal.

Allegations of violations of NRS 281.501(4):

NRS 281.501(4) states, in relevant part:

...A public officer or employee *shall not approve, disapprove, vote, abstain* from voting or *otherwise act* upon any matter:

...

(b) Which would reasonably be affected by his *commitment in a private capacity* to the interest of others.

...

[W]ithout *disclosing sufficient information* concerning the gift, loan, *commitment or interest* to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Except as otherwise provided in subsection 6, such a *disclosure must be made at the time the matter is considered*. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body... if he holds an elective office, to the general public in the area from which he is elected.

...

8. As used in this section, "commitment in a private capacity to the interests of others" means a commitment to a person:

(a) Who is a member of his household;

(b) Who is *related to him by blood*, adoption or marriage within the third degree of consanguinity or affinity...

Trummell does not dispute that Shirley Trummell is her mother and, thus, is related to her by blood within the third degree of consanguinity. Therefore, Trummell has a

commitment in a private capacity to the interests of her mother as defined by NRS 281.501(8).

The question becomes, then, would the independent judgment of a reasonable person be affected by the such a commitment? Or, more specifically, pursuant to NRS 281.501(4)(b), would Trummell be reasonably affected by her commitment in a private capacity to the interest of her mother?

Past opinions of the Commission on Ethics have served as guidelines to determine when disclosures are necessary. For example, the *Woodbury* opinion provides that the burden falls on the public officer to disclose private commitments and the effect they may have on the public officer's decision-making process and, further, to abstain where a reasonable person's independence of judgment would be materially affected by such a commitment. (See *NCOE Opinion No. 99-56*)

Similarly, in the *Boggs McDonald* opinion the Commission set forth guidelines that would require the public officer, where a nexus exists and would materially affect the independence of judgment of a reasonable person in his situation under the circumstances, to: 1) disclose sufficient information concerning his private commitments and interests in order to inform the public of the potential effect of the public officer's actions; and 2) after making such disclosure, to refrain from advocating the passage or failure of the matter and abstain from voting on the matter. (See *Opinion No. 03-34*)

In addition, when the public officer believes a nexus exists but would *not* materially affect the independence of judgment of a reasonable person in the public officer's situation under the circumstances and therefore, abstention is not required, not only would the public officer be required to disclose sufficient information concerning his private commitments and interests - the public officer must also disclose the reason he believes that the independence of judgment of a reasonable person in his situation would not be materially affected under the circumstances and why, then, his abstention is not required. (See *NCOE Opinion No. 03-34*)

Here, Trummell appears aware that her mother was coming before the Commission and why she was doing so. In her reply to the complaint, Trummell states she knew her mother requested an item be placed on the Commission agenda, and that is one of the reasons Trummell waited to put Maher's performance evaluation on a later agenda. Further, prior to the January 3, 2005 meeting, Trummell sought the advice of legal counsel and a human resources consultant regarding participation on the issue. Therefore, Trummell appears to have had ample time to determine whether the nexus between her, her mother, and the agenda item would materially affect the independence of judgment of a reasonable person and if so, to disclose her private commitment and determine whether she needed to refrain from advocating and/or voting on the matter. Additionally, the verbatim minutes indicate after initial discussion about a county employee, Trummell stated she was confused as to the discussion regarding a specific employee when the agenda item does not mention a specific employee, but rather it called for an amendment to an existing personnel policy (see discussion beginning on p.

76, line 4 and continuing through page 78 – especially p. 78 lines 5 through 18). It seems apparent from reviewing the minutes that those present knew Trummell’s mother was the employee seeking the change in the policy. Personnel Administrator Shamrell explained to Trummell, after Trummell’s stated confusion, that the agenda item was requested by a specific county employee. Again, this would have been an appropriate time for disclosure.

After reviewing the transcription of the January 3, 2005 minutes of the Nye County Commission, the Executive Director reached the following conclusions:

1. Trummell failed to disclose information regarding her private commitment to her mother. The commitment should have been disclosed at the beginning of the agenda item, but there were other opportunities to do so (e.g. page 78, line 5; page 88, line 24 when her mother spoke; page 92, line 2 at the conclusion of her mother’s remarks when the motion regarding the item was made; or page 101, line 8, when the vote was taken).
2. Trummell advocated the adoption of a new personnel policy which would favor her mother’s request for a flexible work schedule.
3. Trummell voted for the adoption of a new personnel policy which would favor her mother’s request for a flexible work schedule.

Based on the above investigative activities and analysis, the Executive Director believes sufficient credible evidence exists for the panel to recommend the full Commission hold a hearing and render an opinion regarding whether Trummell violated NRS 281.501(4). Only the full commission has the authority to determine if the conduct of Chairman Trummell in relation to this issue rises to the level of a violation of state law.

Allegations of violations of NRS 281.501(2):

NRS 281.501(2) states, in relevant part:

...Except as otherwise provided in subsection 3, in addition to the requirements of the code of ethical standards, a public officer *shall not vote upon or advocate* the passage or failure of, *but may otherwise participate* in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

...

(c) *His commitment in a private capacity to the interests of others.*

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group...

The public policy of this state, vis-à-vis NRS 281.210, prohibits nepotism. The Commission on Ethics has long recognized this policy and has, in the past, opined that the independence of judgment of a reasonable person will be materially affected whenever the interest of a relative of a public officer will be affected by the public officer's actions. It is therefore recommended that in such instances, the public officer should abstain from voting in order to avoid an ethical violation. (See *NCOE Opinion No. 86-6*)

Although abstention deprives the public of a voice in government and the public expects their elected officials to perform the duties for which they were elected, where a private commitment would materially affect one's independence of judgment the public official should abstain. However, this does not mean that an official, especially one with valuable knowledge on an issue, is barred from participating in the discussion of such an issue. However, "that line dividing allowable factual testimony and prohibited advocacy is razor thin." (See the *Kubichek Opinion*, *NCOE Opinion No. 97-07*)

Here, Trummell's statements during the discussion of the agenda item at issue appear to constitute advocacy. The verbatim minutes of the meeting reveal that Trummell led the discussion of the agenda item without disclosing her private commitment vis-à-vis her mother. After some dialogue which intimated that the employee at the heart of the request for the Personnel policy amendment was her mother, Trummell, instead of discussing her duty to abstain, expressed her confusion about the discussion concerning the specific employee (her mother) and stated there was no specific employee mentioned in the agenda item and that it was her understanding this item was for an amendment to the Personnel policy as a whole (See minutes p. 78 lines 5 through 18). Trummell continued to advocate for the change despite her commitment in a private capacity to her mother's interests.

The Commission on Ethics recognizes that the intent of advocacy is to get the hearer to believe the same as the speaker. Further, as set out in the *Kubichek* opinion, "where the speaker has special influence and power because of her position, the hearer might be influenced to act not because of the merits of the speaker's argument but because of the speaker's position itself." (See *NCOE Opinion 97-07*)

Here, Trummell holds the position of Chairman of the Nye County Commission – a position to which her peers on the Commission elected her. In this position of power she has the unique ability to manage, direct, and control discussion regarding items before the Commission and, likely, may influence others on the Commission or under the direction of the Commission. For instance, at one point in the discussion, Trummell stated the Commission needed to decide whether or not it thought education was important and if not, that it should remove that criteria from any of the county employment requirements. Trummell also stated that if the Commission agreed education was important, the Commission should encourage department heads to evaluate whether education would affect services instead of trying to micromanage. Later, Trummell stated she did not think it was the Commission's job or the county manager's job to micromanage specific departments. These statements appear to go beyond mere fact to advocacy. Advocacy is defined as "the act of pleading or arguing in favor of something, such as a cause." It

appears Trummell's statements sought or prompted those with similar views to vote a certain way. The last statement referenced tends to advocate for the amendment of a policy that would not require the approval of the county manager when a flexible work schedule is requested by a county employee.

As a whole, Trummell's statements do not seem informative in nature, which is allowed under NRS 281.501(2); rather, the statements appear to advocate. The minutes illustrate during the discussion, the personnel administrator and one of the commissioners were vehemently opposed to the idea of amending the personnel policy to allow for flexible work schedules. Yet when the motion was made to draft a new policy, it passed unanimously with four affirmative votes including Trummell (with the fifth of five Commissioners being absent that day).

In her response, Trummell states that prior to the hearing of the agenda item at issue, she consulted with Ron Kent, lead Civil Assistant District Attorney for Nye County, and Larry Beller, a human resources consultant for the county, and both advised her it would be appropriate for her to "participate" in the discussion. Although this advice may have been correct in the context of the Ethics in Government law, we are unaware as to whether the advice also suggested disclosure, described the difference between participation and advocacy, or entailed a description of the statutory abstention provisions.

Trummell makes the argument that the resulting benefit which would accrue to her mother is not greater than that accruing to any other member of the profession, occupation, or group. However, the Executive Director suggests a commitment to one's parent would likely materially affect the independent judgment of a reasonable person. In reviewing the transcript, it appears the commitment in a private capacity to the interests of her mother did, in fact, materially affect Trummell's independence of judgment in these circumstances. It is logical to assume that any reasonable person in a similar situation would be influenced by loyalty and commitment toward a parent. Based on the statements within the minutes, the Executive Director concludes Trummell actively advocated in this matter and did not abstain from voting pursuant to the provisions of NRS 281.501(2).

Based on the above investigative activities and analysis, the Executive Director believes sufficient credible evidence exists for the panel to recommend the full Commission hold a hearing and render an opinion regarding whether Chairman Trummell violated NRS 281.501(2). Only the full commission has the authority to determine if the conduct of Chairman Trummell in relation to this issue rises to the level of a violation of state law.

H. CONCLUSION:

The Executive Director hereby recommends the panel find just and sufficient cause exists for the Commission to hold a hearing and render an opinion on the allegations that the subject violated NRS 281.501(2) and NRS 281.501(4).

DATED: November 22_, 2005

Stacy M. Jennings
STACY M. JENNINGS, MPA
EXECUTIVE DIRECTOR